

501 CMR 4.00: HATE CRIMES

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4.01: Purpose and Authority

501 CMR 4.00 is promulgated pursuant to M.G.L. c. 22C, § 33 "the Hate Crimes Reporting Act", pertaining to the collection and periodic reporting of hate crimes data.

4.02: Definitions

The following phrases shall have the following meanings:

Advocacy Organization: Any non-profit or not-for-profit group which represents or serves constituencies targeted in hate crimes motivated by the forms of bias enumerated at 501 CMR 4.02(3); or gathers information relating to the incidence, circumstances, patterns, causes, or nature of hate crimes or incidents or any specific type(s) of hate crimes or incidents.

Bias Indicators: Objective facts, circumstances, or patterns attending a criminal act(s) which, standing alone or in conjunction with other facts or circumstances, suggest that the offender's actions were motivated, in whole or in part, by any form of bias enumerated at 501 CMR 4.02.

Bias Motive: Hatred, hostility, or negative attitudes towards, or prejudice against, any group or individual on account of race, religion, ethnicity, handicap, gender, or sexual orientation, which is a contributing factor, in whole or in part, in the commission of a criminal act. A bias motive can be inferred from the presence of one or more bias indicators. The specific forms of bias covered by the Hate Crimes Reporting Act are:

Racial/Ethnic/National Bias

- Anti-Black
- Anti-White
- Anti-Asian
- Anti-Hispanic
- Anti-Arab
- Anti-Other

Racial/Ethnic/National Group

- Religious Bias
- Anti-Jewish
- Anti-Catholic
- Anti-Protestant

Anti-Islamic (Moslem)

- Anti-Other Religion

Sexual Orientation Bias

- Anti-Gay (Male)
- Anti-Lesbian
- Anti-Other Sexual Orientation

Handicap Bias

- Anti-Persons with AIDS
- Anti-Physically Disabled
- Anti-Mentally Disabled (i.e. Mental illness, mental retardation)

4.02: continued

Gender Bias:

Anti-Female

Anti-Male

Anti-Transgender Bias (as further defined by the Governor's Task Force on Hate Crimes).

Anti-Transgender Bias is hatred, hostility, or prejudice towards a person who, in dress, speech, and general appearance, visibly:

- (a) "identifies" with the gender opposite to his or her biological or birth gender; or
- (b) does not conform to conventional gender role expectations for his or her biological or birth gender. Bias is usually attributed to the circumstance of traditional gender role conventions being openly violated. This bias constitutes gender bias because a "transgender person" is regarded differently and less favorably than would a person of the opposite biological sex, for engaging in similar conduct.

A bias motive may also consist of an intent to interfere with, disrupt, or deprive another person(s) of his/her constitutional rights by threats, intimidation, harassment, or coercion.

Hate Crime:

- (a) Any criminal act to which a bias motive is evident as a contributing factor, or
- (b) Any act which constitutes a violation of:
 1. M.G.L. c. 265, § 37 or 39;
 2. M.G.L. c. 266, § 127A;
 3. M.G.L. c. 272, § 92A.

Hate Crime Report: An account of a hate crime from a law enforcement source received or collected by the Crime Reporting Unit.

Hate Group: An organization, formal or informal, which promotes bias, animosity, hostility, or malice against persons belonging to a racial, religious, ethnic/national origin, sexual orientation, handicap, or gender group (*e.g.* the Ku Klux Klan, American Nazi Party, *etc.*).

Hate Incident: Any act, whether consisting of conduct, speech, or expression, to which a bias motive is evident as a contributing factor, without regard for whether the act constitutes a crime.

Hate Incident Report: An account of a hate incident from a civil rights agency or advocacy organization received or collected by the Crime Reporting Unit.

4.03: Procedure for Reporting

(1) Hate crimes should be reported by state, local, and campus police, and other law enforcement agencies to the Crime Reporting Unit of the Criminal History Systems Board and the Department of State Police. The Crime Reporting Unit is to serve as the repository of hate crimes reports, and shall bear responsibility for disseminating hate crimes data as required by M.G.L. c. 22C, § 33.

(2) Hate crimes are to be reported to the Crime Reporting Unit through the Massachusetts Hate Crime Reporting Form, a copy of which is annexed to 501 CMR 4.00 as Exhibit A. Reports should include the information specified in the form: the date and time of a hate crime, all evident bias indicators or whether the crime was a *per se* hate crime, the type(s) of bias evident, the target of the hate crime, indications as to an organized hate group or pattern of criminal activity, identifying information regarding victims(s) and perpetrator(s), injuries suffered, and weapons used, and the other crimes committed in the course of the incident. The Crime Reporting Unit may revise and update the form from time to time, consistent with M.G.L. c. 22C, § 33 and 501 CMR 4.00.

4.03: continued

(3) Police departments and law enforcement agencies should complete and submit a hate crime report for each criminal act that appears to be motivated by bias because of the presence of one or more bias indicators. The hate crime should be reported at whatever point a bias motive becomes evident to responding or investigating officers, or on a periodic basis at intervals not to exceed one year. In some cases, a bias motive may be immediately apparent (e.g., a synagogue defaced with anti-Semitic graffiti and swastikas); in other cases, bias indicators may not appear until an investigation is concluded. The report should be filed as soon as practicable, and should be filed even in cases in which no hate crime or civil rights charges are referred or prosecuted.

(4) If, after an initial hate crimes incident report was submitted, additional information regarding bias becomes available, an amended report or additional data or information should be submitted to the Crime Reporting Unit.

NON-TEXT PAGE

4.04: Bias Indicators

(1) The following criteria can assist law enforcement officers in determining whether a particular crime should be classified as a hate crime. These criteria are not all inclusive, and each case must be examined on its own facts and circumstances. Common sense judgment should also be applied in making the determination whether a crime should be classified as a hate crime.

- (a) The offender and the victim were of different racial, religious, ethnic/national origin, handicap, gender or sexual orientation groups. For example, the victim was black and the offenders were white.
- (b) Bias-related oral comments, written statements, or gestures were made by the offender which indicate his/her bias. For example, the offender shouted a racial or anti-gay epithet at the victim or made an abusive or pejorative reference based on gender.
- (c) Bias-related drawings, markings, symbols, or graffiti were left at the crime scene. For example, a swastika was painted on the door of a synagogue.
- (d) Certain objects, items, or things which indicate bias were used (e.g., the offenders wore white sheets and white hoods) or left behind by the offenders(s) (e.g., a burning cross was left in front of the victim's residence).
- (e) The victim is a member of a racial, religious, ethnic/national origin, handicap, gender or sexual orientation group which is overwhelmingly outnumbered by members of another group in the area where the victim lives or works and the incident took place.
- (f) The victim was visiting a location where previous hate crimes had been committed against other members of his/her racial, religious, ethnic/national origin, handicap, gender or sexual orientation group and where tensions remain high against his/her group.
- (g) Several incidents have occurred in the same locality, at or about the same time, and the victims are all of the same racial, religious, ethnic/national origin, handicap, gender or sexual orientation group.
- (h) Victims or witnesses perceive that the incident was motivated by bias.
- (i) The victim was engaged in activities promoting a racial, religious, ethnic/national origin, handicap, gender or sexual orientation group. For example, the victim is a member of the NAACP, participated in gay rights demonstrations, etc.
- (j) The incident coincided with a holiday relating to or a date of particular significance to, a racial, religious, ethnic/national origin, handicap, gender or sexual orientation group (e.g., Martin Luther King Day, Rosh Hashanah, Gay/Lesbian Pride Day, etc.).
- (k) The offender was previously involved in a similar hate crime or is a member of, or associates with, a hate group.
- (l) There were indications that a hate group was involved. For example, a hate group claimed responsibility for the crime or was active in the neighborhood.
- (m) A historically established animosity exists between the victim's ethnic/national/religious group and the offender's ethnic/national/religious group.
- (n) The victim, although not a member of the targeted racial, religious, ethnic/national origin, handicap, gender or sexual orientation group, is a member of an advocacy group supporting the precepts of the victim group, or is friendly with members of a victim group.
- (o) The victim was in or near an area or place commonly associated with or frequented by a particular racial, religious, ethnic/national origin, handicap, gender or sexual orientation group (e.g., a gay bar).
- (p) There was no clear economic motive for an assault and battery.
- (q) The victim was in the company of, or married to, a member of a targeted group.
- (r) The victim has received harassing mail or phone calls or has been victim of verbal abuse based on his/her affiliation with a targeted group.
- (s) The victim was perceivable by the offender as violating or breaking from role conventions or stereotypes, or working in non-traditional employment.
- (t) The crime involved extreme mutilation, cruelty, or brutality.
- (u) The offender has been subject to M.G.L. c. 209A restraining orders against two or more different women.
- (v) The offender has a history of previous crimes with a similar modus operandi, and there have been multiple victims of the same racial, religious, ethnic/national origin, handicap, gender or sexual orientation group.

4.04: continued

(2) Bias indicators need not establish that the predominant purpose of a perpetrator's actions was motivated by hatred or bias. It is sufficient for classification of an incident as a hate crime that a perpetrator was acting out of hatred or bias, together with other motives; or that a bias motive was a contributing factor, in whole or in part, in the commission of a criminal act.

(3) For a crime to be classifiable as a hate crime, it is sufficient that bias indicator(s) would, in the exercise of professional law enforcement judgment, directly or circumstantially support a finding of a bias motive. Bias indicators need not conclusively demonstrate that a criminal act was motivated by bias or bigotry. In some instances, one bias indicator may be sufficient to support an inference that a crime was motivated by bias or bigotry (e.g., bias-related epithets or markings). In other cases, more than one bias indicator may be necessary to warrant such an inference. In each instance, a law enforcement judgment is necessary to assess whether a given crime was hate motivated.

(4) Facts or circumstances deemed sufficient to support an arrest or criminal charge under M.G.L. c. 265, §§ 37 and 39; c. 266, § 127A, and c. 272, § 92A are automatically sufficient for classification and reporting of an incident as a hate crime.

(5) Even if the offender was mistaken in his/her belief that the victim was a member of a racial, religious, ethnic/national origin, handicap, or sexual orientation group, the offense is still a hate crime as long as the offender was motivated by bias against that group. For example, a non-gay man walking by a bar frequented by gays was attacked by six teenagers mistakenly believing the victim to be gay. Although the offenders were mistaken, the offense is a hate crime because it was motivated by the offenders' anti-gay bias.

4.05: Solicitation of Reports

The Secretary of Public Safety shall solicit hate crimes reports from state, local, and campus police departments and other law enforcement agencies. This solicitation shall inform such departments and agencies of the need to report all incidents classifiable as hate crimes to the Crime Reporting Unit, together with all information requested by the Massachusetts Hate Crime Reporting Form. The solicitation shall occur at least once per year, prior to the close of reporting in preparation for publication of the Annual Report, and urge that all hate crimes for the reporting period be reported as soon as possible to be included in the Annual Report

4.06: Procedures to Ensure Accuracy of Reports

(1) The Crime Reporting Unit shall solicit and receive reports of hate incidents from reliable sources other than police departments and law enforcement agencies (i.e., advocacy organizations and civil rights agencies) on a regular basis.

(2) The Crime Reporting Unit shall collect, tabulate, and report hate incident data from advocacy organizations and civil rights agencies, separately from hate crimes data from law enforcement sources. Hate incidents shall be reported through the Hate Incident Reporting Form, a copy of which is annexed to 501 CMR 4.00 as Exhibit B. Reports should include sufficient information to demonstrate that the incident is properly classifiable as a hate incident--the date and time of the incident, the type(s) of bias evident, all evident bias indicators, the target of the incident, indications as to an organized hate group or pattern of hate-motivated activity, identifying information regarding the victim(s) and the perpetrator(s), whether the incident was reported to the police, and a narrative description of the incident. The Crime Reporting Unit may revise the form at Exhibit B from time to time, consistent with M.G.L. c. 22C, § 33 and 501 CMR 4.00.

(3) Any incident, to be properly classifiable as a hate incident, must reflect through the presence of one or more bias indicators a type of bias motive enumerated at 501 CMR 4.02(3). The Crime Reporting Unit shall reject Hate Incident Reports which do not reflect a bias motive as enumerated at 501 CMR 4.02(3), or which do not supply sufficient information through which a bias motive can be ascertained.

4.06: continued

(4) The Crime Reporting Unit shall regularly share its hate crimes and hate incident data with the Uniform Crime Reports Section of the FBI, and make these data available to police and law enforcement agencies on request.

(5) To be entitled to report hate incidents to the Crime Reporting Unit, advocacy organizations and civil rights agencies must have representative[s] participate in training in the proper classification of hate incidents. This training may be conducted by the Crime Reporting Unit itself, or may utilize curricula developed by the Criminal Justice Training Council with respect to classification of hate crimes.

4.07: Dissemination of Hate Crimes Information

(1) The Crime Reporting Unit shall collect all hate crimes and hate incident data reported by police departments, law enforcement agencies, advocacy organizations, and civil rights agencies. The Crime Reporting Unit shall forward hate crimes reports to the Attorney General on a regular basis.

(2) The Crime Reporting Unit shall summarize and analyze hate crimes data, and its summaries and analyses of hate crimes data shall be organized on an annual basis into an Annual Report to be distributed in accordance with M.G.L. c. 22C, § 34.

(3) Summaries and analyses of hate crimes data prepared for the Annual Report shall reflect the following information:

- (a) overall incidence of hate crimes for the Commonwealth for the reporting period;
- (b) incidence of hate crimes by city and town, and by type of bias motivation indicated;
- (c) incidence of hate crimes by type of criminal act involved;
- (d) incidence of hate crimes by types of targets and injuries involved;
- (e) statistical analyses of types of victims by age, race/ethnicity, sex, and extent of injury;
- (f) statistical analyses of types of perpetrators by age, race/ethnicity, sex, and frequencies of arrests, and convictions;
- (g) incidence of hate crimes by weapons used;
- (h) trends in the frequency, locales, and types of hate crimes reported;
- (i) narrative, interpretive, and qualifying elaboration of the information presented at a-h, and the overall hate crimes data gathered for the reporting period.

(4) Hate incident data shall be summarized, analyzed, and reported in the Annual Reports to afford a basis for comparison with hate crimes data obtained through law enforcement sources. Summaries, analyses, and reports of hate incident data shall reflect the information specified at 501 CMR 4.07(3)(a), (b), (d) through (f), (h) and (i), and in addition, the extent to which hate incidents are reported to the police.

4.08: Confidentiality

The Crime Reporting Unit, in conjunction with the Criminal History Systems Board, shall assure that no disclosure of Criminal Offenders Record Information subject to M.G.L. c. 6, §§ 167 through 178 is made otherwise than in accordance with the provisions of said statute. Names of victims and perpetrators of hate crimes should not be reported to the Crime Reporting Unit on the prescribed form, in the course of the hate crimes data reporting. Crimes shall be referenced and identified by the case number assigned by the reporting agency, the time and date of the incident, and other particularized information.

REGULATORY AUTHORITY

501 CMR 4.00: M.G.L. c. 22C, § 33.

501 CMR: EXECUTIVE OFFICE OF PUBLIC SAFETY

4.00: continued

EXHIBIT A
MASSACHUSETTS HATE CRIME REPORTING FORM

Agency Name:		ORI: _____		Case #						
Date most recent incident: _____		Time (military format) _____								
Revision of previously submitted report? <input type="checkbox"/> Yes <input type="checkbox"/> No		If YES, original case#: _____								
Location of offense: _____										
Target of Hate Crimes: (circle all that apply)		1-Person(s) 2-Private Property 3-Public Property 4-Religious facility 5-Other, describe: _____								
Bias Indicators (circle all that apply)		1-Spray painted Hate symbols/language 2-Verbal harassment/slurs 3-Damage to prop 4-Threatening mail 5-other, describe: _____								
Indication of Organized Hate Group?			___ Yes ___ No (describe in narrative)							
Prior bias incidents to this victim at this location?			___ Yes ___ No (describe in narrative)							
Weapon Used: (circle all that apply):		1-Gun 2-Knife/cutting 3-Stick/club 4-Rocks/bricks 5-Hands/feet 6-Other _____ 7-None								
Race/Eth	check	Religious	check	Sexual	check	Handicap	check	Gender	check	
11 Black		21 Jewish		41 Gay(male)		51 Mental		61 Male		
12 White		22 Catholic		42 Lesbian		52 Physical		62 Female		
13 Asian		23 Protestant		43 Other___		52 AIDS		63 Anti-Transgender		
14 Hispanic		24 Islamic				53 Other___				
15 Arab		25 Other___								
16 Other___										
Check all that apply										
Victim	Age	Race	Sex	Inj	Perp	Age	Race	Sex	Arrest?	Court order or injunction granted
No #1			M/F		No #1			M/F	Y/N	
No #2			M/F		No #2			M/F	Y/N	
No #3			M/F		No #3			M/F	Y/N	
If other victims, total # _____					If other perps, total # _____					
1	Vandalism	2	Damage Relig Obj	3	Harassment	4	Disorderly Person	5	Trespass	
4	Threats	7	Property Damage	8	Weapons Offense	9	Sex Offenses	10	Arson	
11	Simple Assault	12	Larceny Theft	13	Burglary	14	Aggravated Assault	15	Robbery	
16	Rape	17	Manslaughter	18	Murder	19	General Civil Rights			
Check all that apply										
Narrative (attach additional sheets as necessary)						IF ZERO REPORTS, CHECK: _____				
Filed out by: _____						Chief's signature: _____ Date: _____				

